

## DETAILED ACTION

### ***Allowable Subject Matter***

1. The following is an examiner's statement of reasons for allowance:

The prior art of record fails to anticipate or make obvious the inventions of claims 1-4, 6, 14, 20-35, 37-40, 68-72, 74, 81-97, 98-100, 103, and 104 including, *inter-alia*, predicting disordered breathing by detecting a condition and comparing the condition to criteria, and also collecting data associated with the predictions by counting the disordered breathing predictions.

The prior art of record fails to anticipate or make obvious the inventions of claims 41-45, 50, 52-55, and 101, including, *inter-alia*, predicting disordered breathing by detecting a condition and comparing the condition to criteria, and also collecting data associated with the accuracy of predictions.

The prior art of record fails to anticipate or make obvious the method of claims 56-62, 66, 67, and 102, including, *inter-alia*, predicting disordered breathing by detecting a condition and comparing the condition to criteria, where the condition is the detection of the periodicity of occurrences of the disordered breathing.

Mazar (US Patent Application Publication 2004/0133079) discloses a method for predicting disordered breathing comprising detecting a physiological (respiratory quality) condition associated with disordered breathing, comparing the condition to one or more sets of disordered breathing prediction criteria, predicting the disordered breathing based on the comparison, and collecting data

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on the predictions and conditions, where the comparing and predicting are performed at least implantably (paragraphs [0016], [0033]-[0035], [0038]). Mazar does not disclose counting the disordered breathing occurrences, detecting the periodicity of the occurrences, or collecting data related to the accuracy of predictions.

Scheiner (US Patent 6415183) discloses prediction of disordered breathing comprising detecting a physiological (respiratory quality) condition associated with disordered breathing, comparing the condition to one or more sets of disordered breathing prediction criteria, predicting the disordered breathing based on the comparison, and collecting data on the predictions and conditions, where the comparing and predicting are performed at least implantably (column 5, lines 31-39 and 44-62; column 6, lines 8-13, 53-54, and 57-65). Scheiner does not disclose also collecting data relating to the accuracy of predictions, nor counting occurrences or detecting the occurrences' periodicity.

Mazar (US Patent Application Publication 2004/0128161) discloses a method for predicting disordered breathing comprising detecting a condition associated with disordered breathing, comparing the condition to a set of disordered breathing prediction criteria, and predicting the disordered breathing based on the comparison, where at least one of the predicting and comparing is performed implantably (paragraphs [0027]-[0031], [0061], [0066]-[0067]). Mazar also discloses comparing the condition to the criteria by computing an estimated probability that disordered breathing will occur based on the condition by computing a composite estimated probability score, and comparing the estimated

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probability to a threshold probability associated with an onset of disordered breathing (paragraphs [0076]-[0079]). Mazar does not disclose counting the disordered breathing occurrences, detecting the periodicity of the occurrences, or collecting data related to the accuracy of predictions.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the newly amended claims.

In particular, Applicant's arguments regarding the suitability of the statutory double patenting rejection with Application 10/643154 are not persuasive and do not affect the allowability of this application, since Applicant merely argues that the co-pending application teaches steps *in addition to* the previously claimed steps. These additional steps do not preclude anticipation of the claims; the rejection has been withdrawn only as a result of the amendments to the claims, since Applicant's arguments are not persuasive.

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***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN E. TOTH whose telephone number is (571)272-6824. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Marmor, II/  
Supervisory Patent Examiner  
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/K. E. T./  
12/5/07